

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

December 18, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 17, 1998. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am working with a client that is starting to machine raw materials and assemble parts to be incorporated into commercial buildings. The assembled parts are made per the building specifications. On some jobs the client will be attaching the parts to the building and others will be supplying the materials for the general contractor to attach to the building.

We would like to know as to what sales or use tax would apply on the sales on the sale described in the above paragraph and what literature you can provide so that we can be able to apply the sales & use tax as being the correct per tax law.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term construction contractors includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

As previously stated, contractors are deemed end users of property that is purchased for incorporation into real property. If general contractors did not

purchase the tangible personal property, then the general contractors cannot be held liable for tax due on another entities' purchases. If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

The basic State rate of tax under the Retailers' Occupation Tax Act is 6.25%. In addition to the basic State rate of tax, depending upon the selling location of the retailers, there may be local taxes that apply in addition to the basic State rate of tax. The basic State rate of tax under the Use Tax Act is 6.25%.

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405, enclosed.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.